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Sharon's Lawyer, Summing Up, Flays Time's Correspondents and Editors

Article 'Smells Like Last Week's Fish,' He Tells Libel Jury

By Herbert H. Denton
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NEW YORK, Jan. 11—Ariel Sharon's lawyer assailed Time magazine reporters and editors today as smug, arrogant liars who libeled the former Israeli defense minister in an article that "smells like last week's fish."

Attorney Milton S. Gould pounded the lectern and shouted until he became hoarse during more than five hours of rambling, nonstop invective that marked his closing argument to the jury hearing Sharon's \$50 million libel case.

Gould compared Time's Jerusalem correspondent, David Halevy, to "burglars in the penitentiary," called former Israel bureau chief Harry Kelly a "dope" and several times described writers, researchers and editors at Time headquarters in New York City as the "smooth-faced boy scouts of the Avenue of the Americas."

Of Time editor-in-chief Henry Anatole Grunwald, Gould said he is "a man who can't find it in his heart to ever say, 'We were wrong. We apologize.'"

During a recess today, Time spokesman Mike Luftman confirmed that presiding judge Abraham D. Sofaer had initiated an effort this week for an out-of-court settlement. The attempt, like others undertaken privately in recent weeks, failed.

Luftman said Time was unwilling to agree to anything more than a narrow retraction of the paragraph at issue in the Feb. 21, 1983, cover story. In agreeing to enter negotiations involving Sofaer, Luftman said, magazine officials "felt it was extremely unlikely that any statement we would agree to would be acceptable to the other side."

Although Gould has told reporters that he presented Time's offer to Sharon before rejecting it, Sharon

insisted, "I never saw it. It's one of the rumors spread by the Time magazine. It's another lie."

After an examination of secret government papers in Jerusalem Sunday, Time acknowledged that it erred in reporting that details of a conversation between Sharon and Lebanese Phalangist Christian leaders were in a secret appendix to an Israeli commission's report on the 1982 massacre at two Palestinian refugee camps near Beirut.

Time lawyers and spokesmen have refused to concede that Time erred in reporting that Sharon had discussed with the Phalangists the need for them to seek vengeance for the assassination of their leader, president-elect Bashir Gemayel.

The conversation between Sharon and the Phalangists reportedly occurred the day before he decided to allow Christian militiamen into the refugee camps, where they killed hundreds of Palestinians.

Retired Israeli chief justice Yitzhak Kahan, who headed the commission investigation of the killings, reviewed classified commission papers Sunday. He reported to the court here that they contained no evidence to support any of Time's allegations.

The Kahan commission found that Sharon bore "indirect responsibility" for the massacre because he should have known that a slaughter was possible. Forced to resign as defense minister after the findings were announced, Sharon now is minister of industry and trade.

Former Israeli justice minister Haim Zadok, representing Time, was allowed to look at the documents during Kahan's review and later expressed "reservations" about Kahan's conclusions.

Although the jury has been presented a letter describing Zadok's concerns, Sofaer has sealed it from public view, saying he had made an agreement with the Israeli government to do so.

In his closing arguments, Gould praised Kahan as a man of utmost integrity and noted that Time lauded him in articles written after the commission probe. Gould ridiculed Zadok as a "hard gun."

"If Zadok came from Tombstone, Ariz., rather than Tel Aviv, I'd call him 'Last Ditch' Zadok," Gould said, as Sharon chuckled loudly from his front-row seat.

"For Mr. Zadok to come in and say he has reservations is an insult to your intelligence. You can get a lawyer to write a letter of opinion saying anything you want, especially if you are paying him to write a letter of opinion you are using in a legal case," Gould said.

Noting that Israeli intelligence agents had taken notes during Sharon's controversial meetings with Phalangist leaders, Gould said it was also preposterous to think that

Sharon would have discussed revenge in the meetings.

"You got to be nuts [to do that]," Gould told the jury, "and Sharon ain't nuts. He may be fat, but he ain't crazy."

Gould said it was a "mistake, a plain mistake" for Sharon to send the Phalangists into the refugee camps and "he knows as he sits here hearing me talking that he made a mistake."

He praised Sharon lavishly, calling him one of the legendary figures in the history of "little Israel." He told jurors that their verdict would determine whether history notes Sharon as a "great man, a great soldier or on the basis of the lies and the vicious speculation [of Time] whether he will go down as a monster, another Herod . . ."

Clearly taking pleasure at retracing Halevy's confusing testimony about his sources for the disputed paragraph, Gould said, "Halevy fabricated what Time published. I think he just made it up."

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Gould reminded the jury that Time had placed Halevy on probation in 1980 after an internal investigation determined that sources for one of his reports denied telling him any such thing.

Citing another incident in which Halevy was responsible for an admitted error, Gould likened Halevy to jailed burglars, saying he had been caught only twice but was probably responsible for many more "calculated" mistakes.

Jurors laughed this morning at many of Gould's humorous attacks on Halevy and others at Time, but this evening, as Gould continued, often repetitively, they appeared grim and restless.

Gould finished without having detailed why jurors should find that Time's report was the product of "actual malice," written knowing it was false or seriously doubting its accuracy. Time defended itself on that basis in summation Thursday.

Gould said he would rely on Sofaer's instructions to the jury Monday for explanations of "actual malice," one of the primary standards of proof for libel of a public figure such as Sharon.

Gould told jurors that he had been wrong today in suggesting that Time's paragraph implied that Sharon was a "mass murderer." He said, "Forgive me if I've used the word 'murder' loosely."